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August 18, 2005

2005 AUG 18 P 3: 22 2005 AUG 30 A 10: 56

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Lawrence Norton, Esq.
General Counsel
Federal Election Commission
999 E Street, NW - 6th Floor
Washington, DC 20463

AOR 2005-13

2005 AUG 18 P 4: 56
RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

Re: Advisory Opinion Request

Dear Mr. Norton:

EMILY's List is a nonconnected political committee, active in both federal and non-federal elections, that raises and spends funds in compliance with the requirements of the allocation rules at 11 C.F.R. § 106.6. As the Commission knows, the Committee has challenged those rules in a proceeding now pending before the United States Court of Appeals of the District of Columbia. The Court recently issued a scheduling order in that case.

In the meantime, however, barely 16 months remain in this election cycle and EMILY's List must proceed to plan programs and activities in anticipation that the existing rules will remain in force for the foreseeable future. The management of the Committee is now making decisions about its priorities for the balance of this cycle, and seeks an Opinion about the legal effects of the existing rules on proposals now pending final actions.

1. EMILY's List has developed a budget for the balance of the cycle which stresses nonfederal candidate support and related programs, including public communications and voter drives. One of the proposed budgets, which EMILY's List shares with its donors, would commit the Committee to the expenditure of 65% of its candidate budget for the remaining months of this cycle on contributions to or amounts otherwise spent on behalf of specific nonfederal candidates. If adopted, the budget, presented to donors and used to raise funds from them, would commit EMILY's List to this allocation of resources to nonfederal purposes.

Does EMILY's List correctly read the regulation as requiring nonetheless in these circumstances that no less than half (50%) of its administrative expenses and generic voter drive expenses be paid with federal funds?

2. EMILY's List is preparing a public communication in support of its efforts on behalf of state legislative candidates that will refer to Senator Debbie

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Stabenow and will feature a discussion of her own experiences, earlier in her career, as a candidate for the State Senate in Michigan. The purpose of the communication is to stress the importance of successes for women in state elective office. Senator Stabenow is a candidate for reelection to the United States Senate in Michigan, but none of the communications in question will be distributed in the State of Michigan, nor will they reference her federal candidacy or solicit funds for her federal candidacy. The communication will not refer to any clearly identified nonfederal candidate, but will refer generically to its intent to support nonfederal Democratic women candidates as a class.

Does EMILY's List correctly read the current rule to require the funds raised by this communication to be treated entirely as federal funds, on the grounds that it is a public communication that "refers" to a federal candidate (Senator Stabenow)?

3. The above-described communication, pending approval from the Commission, would contain language with potential application of the provisions of 11 CFR 100.57. One portion of the communication will ask for recipients to support the nonfederal programs of EMILY's List, but the Committee wishes to avoid any language that would be construed to "indicate" a use of the funds to support federal candidates, including but not limited to Senator Stabenow.

The Committee requests a Commission opinion on the following options for that portion of the letter that solicits contributions:

- (a) "We are asking for your support, so that EMILY's List can support candidates who, like me, could never succeed as women in politics without the combined commitment of all us."
- (b) "EMILY's List's support over the years for candidates like me has made an enormous difference to the progress of women toward equality in the pursuit of political office. But we have a long way to go. That's why I need your help."
- (c) "EMILY's List has always supported me (Senator Stabenow) when I most needed it. And that is why I am asking you to support EMILY's List today, so that it can continue the work on behalf of women who, by seeking state office today, will be ready to claim national leadership tomorrow."

3. May EMILY's List avoid the federal financing restrictions associated with a reference to a federal candidate in any mailing or other public communication

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if the candidate is a candidate for FECA purposes but not running in this 2006 federal election cycle?

EMILY's List requires guidance on this issue, because in the event that the FEC advises that Senator Stabenow's candidacy restricts the financing of the communication described in question 2, EMILY's List would propose to arrange for another federal officeholder, not standing for reelection in this cycle, to be featured in the communication. An opinion on this issue is requested also so that EMILY's List, which is planning mailings other than the one proposed for Senator Stabenow's appearance, can arrange for references in them to other women who are well-known federal elected officials.

4. EMILY's List also expects to implement its nonfederal objectives by making public communications in support of state legislative initiatives and referenda. These communications would not name a federal or nonfederal candidate, but would appeal to Democratic women to support or oppose these initiatives.

Does EMILY's List correctly read the rule to require that the reference to Democrats in these communications requires that the associated costs be paid at least 50% with funds raised under the restrictions of federal law?

5. Does the answer to No. 4 depend on the nature of the support that EMILY's List provides in the particular state? More specifically, does the answer depend on whether EMILY's List otherwise only supports nonfederal candidates in that state in this cycle?

We appreciate the Commission's consideration of this Request. Should you have any questions, please contact the undersigned at 202-434-1602 or 202-434-1622, respectively.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert F. Bauer", is written over the printed name.

Robert F. Bauer
Judith L. Corley
Counsel to EMILY's List



"Corley, Judy (Perkins
Coie)"
<JCorley@perkinscoie.com>
08/26/2005 06:25 PM

To <DPugh@fec.gov>
cc "Bauer, Bob (Perkins Coie)" <RBauer@perkinscoie.com>
bcc
Subject Re EMILY's List AOR

History: This message has been forwarded.

Duane - This will confirm our conversation regarding the Advisory Opinion requested by EMILY's List:

- The number of the paragraphs contains a typographical error. The second paragraph numbered 3 at the bottom of page 2 should be paragraph 4, and the following paragraphs should be renumbered accordingly.

- In connection with question 2, you asked whether EMILY's List was asking for guidance as to how to treat the proceeds of the fundraising communication or how to pay for it. EMILY's List would like an answer to both questions.

- You asked whether the budgets referenced in paragraph 1 would be included in the communications described in paragraphs 2 and 3. The answer is no.

- You also asked whether the communications described in paragraphs 2 and 3 would be made through television or radio. The answer is no.

Please let me know if you need any additional information.

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